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U.S. BANKRUPTCY COURT
N.D. OF ALABAMA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

Case No. **02 02777**
Chapter 11

**MOTION FOR ORDER EXTENDING THE TIME WITHIN WHICH THE
DEBTOR MAY FILE NOTICES OF REMOVAL OF PENDING ACTIONS**

Shook & Fletcher Insulation Co., the debtor and debtor-in-possession in this case, ("Shook" or the "Debtor"), by counsel, hereby moves this Court for entry of an order, under section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Bankruptcy Rule 9004, extending the time period within which the Debtor may file notices of removal under Bankruptcy Rule 9027(a)(2), and in support thereof respectfully represents:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are 11 U.S.C. §105(a) and Bankruptcy Rule 9004.

BACKGROUND

3. On April 8, 2002 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Pursuant

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to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its properties as debtor-in-possession.

4. The Debtor incorporates by reference as if fully set forth herein the Declaration of Wayne W. Killion, Jr. in Support of Voluntary Petition and First Day Motions filed with this Court on the Petition Date.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

5. Section 1452 of Title 28 of the United States Code provides for the removal of actions related to bankruptcy cases:

- (a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. § 1452(a) and (b).

6. The Bankruptcy Rules fix the time periods for the filing of notices to remove claims or causes of action (the "Removal Period"). For litigations which are pending as of the petition date:

[A] notice of removal may be filed only within the longest of (A) 90 days after the order of relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11

reorganization case but not later than 180 days after the order for relief.

FED. R. BANKR. P. 9027(a)(2). For litigations which are initiated after the Petition Date (assuming the filing of such litigation does not violate the automatic stay):

[A] notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

FED. R. BANKR. P. 9027(a)(3).

7. The Debtor believes that all claims or causes of action against it or affecting property of the estate that were pending as of the Petition Date were stayed pursuant to Section 362 and, therefore, the time to remove such actions would expire 30 days after the stay is lifted or terminated with respect to a particular claim or cause of action. Nevertheless, to the extent that such actions were not stayed and thus the 90 day period of Bankruptcy Rule 9027(a)(2)(A) applies, or to the extent that the last phrase of Bankruptcy Rule 9027(a)(2) is interpreted to impose a 180-day outer limit on the Removal Period without regard to the grounds for remand, the Debtor seeks to enlarge the Removal Period, out of an abundance of caution.

8. Similarly, to the extent an action is filed post-petition and not stayed, Bankruptcy Rule 9027(a)(3) imposes a thirty-day time limit for removing certain actions.

9. Bankruptcy Rule 9006(b) authorizes the Court to enlarge time periods, including the Removal Period:

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of the court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period

originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done when the failure to act was the result of excusable neglect.

See also Pacor v. Higgins, 743 F.2d 984, 996 n.17 (3d Cir. 1984), overruled on other grounds by Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995); Raff v. Gordon, 58 B.R. 988, 990 (E.D. Pa. 1988); In re World Financial Services Center, Inc., 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987); 10 COLLIER ON BANKRUPTCY § 9027.05(2), at 9027-10 (1997). The exceptions listed in Bankruptcy Rules 9006(b)(2) and (3) do not include the time limits to file notice of removal under Bankruptcy Rule 9027.

10. The Debtor is party to numerous proceedings (the "Proceedings") currently pending in various courts throughout the country and involving primarily a wide variety of asbestos-related claims filed by thousands of individual asbestos claimants. Due to the number of such Proceedings and the variety of claims presented, while the Debtor is not inclined to remove such Proceedings wholesale or request that they be transferred to this District, the Debtor does not wish to waive its right to do so. Accordingly, the Debtor seeks entry of an order under Bankruptcy 9006(b) extending the time by which it may file notices of removal with respect to any Proceedings pending on the Petition Date or filed thereafter, through and including the date of confirmation of the Plan in this case.

11. The Debtor is seeking confirmation of its prepackaged Plan which, among other things, creates a trust for the benefit of the Asbestos Claimants, and which will utilize alternative dispute resolution mechanisms to resolve Asbestos Claims. Under the Plan, if confirmed, there may be no need for any of the Proceedings to be removed to this Court or to any other federal court. Thus, the requested extension will likely avoid the necessity for any removal notices being filed, while reserving the Debtor's valuable right economically to adjudicate lawsuits in

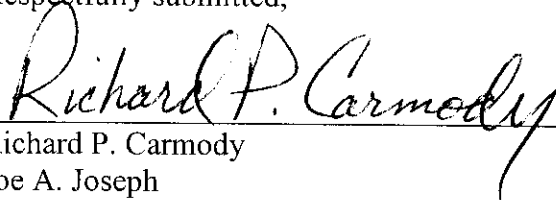
one forum pursuant to 28 U.S.C. § 1452, if the circumstances warrant removal. Accordingly, the Debtor submits that the requested extension of time is in the best interest of the Debtor, its estate and its creditors and parties-in-interest.

12. The requested extension of time will not affect the Debtor's adversaries, because such adversaries may not prosecute the Proceedings absent relief from the automatic stay in any event. Furthermore, nothing herein will affect the rights of any party to a Proceeding which the Debtor may seek to remove from pursuing remand under 28 U.S.C. § 1452(b). Accordingly, the requested extension of time will not prejudice the rights of other parties to the Proceedings.

13. If the requested extension is not granted pursuant to Bankruptcy Rule 9006, and if confirmation does not occur promptly, the Debtor may be forced to remove hundreds of Proceedings, or the goal of consolidation of the Debtor's affairs into one court may be frustrated and the Debtor may be forced to address these claims and Proceedings in piecemeal fashion, to the detriment of its estate and its creditors and parties-in-interest.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order extending the Removal Period for each Proceeding through and including confirmation of the Debtor's Plan, and granting such other and further relief as the Court deems proper.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard P. Carmody". The signature is written in dark ink and is positioned above the printed name and address.

Richard P. Carmody
Joe A. Joseph
Lange, Simpson, Robinson & Sommerville, LLP
2100 3rd Avenue North, Suite 1100
Birmingham, AL 35203-3367
(205) 250-5000

Roger Frankel
Richard H. Wyron
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Proposed Attorneys for Shook & Fletcher Insulation
Co., as Debtor and Debtor-in-Possession

Dated: April 8, 2002

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re:

SHOOK & FLETCHER INSULATION CO.

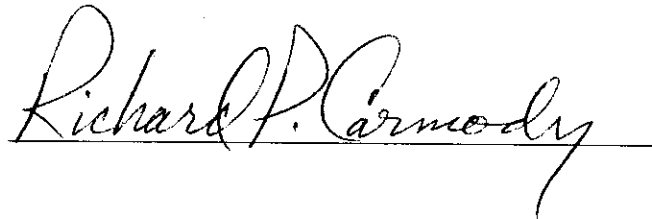
Debtor-in-Possession.

Case No. _____

Chapter 11

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2002, I caused a copy of the foregoing Motion for Order Extending the Time Within Which the Debtor May File Notices of Removal of Pending Actions and proposed Order to be served upon the persons on the attached Service List in the manner indicated.



Shook & Fletcher Insulation Co.
Attachment to Certificate of Service

Bankruptcy Administrator

J. Thomas Corbett, Esq.*
Office of the Bankruptcy Administrator
United States Bankruptcy Court
Robert South Vance Federal Building
1800 5th Avenue North
Birmingham, AL 35203

Futures Representative

R. Scott Williams, Esq.*
Haskell Slaughter Young & Rediker, L.L.C.
1200 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, AL 35203

Futures Representative's Counsel

Robert M. Fishman, Esq.
Shaw Gussis Fishman Glantz & Wolfson, LLC
1144 West Fulton Street, Suite 200
Chicago, IL 60607

Unofficial Committee of Asbestos Claimants

Bryan Blevins, Esq.
Provost & Umphrey Law Firm L.L.P.
490 Park Street
P.O. Box 4905
Beaumont, TX 77704

James L. Ferraro, Esq.
Kelly & Ferraro, LLP
1300 East Ninth Street, Suite 1901
Cleveland, OH 44114

David O. McCormick, Esq.
Cumbest, Cumbest, Hunter & McCormick, P.A.
P.O. Drawer 1287
708 Watts Avenue
Pascagoula, MS 39568-1287

Joseph F. Rice, Esq.
Ness Motley Loadholt Richardson & Poole, PC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464

Jeffrey Varas, Esq.
Varas & Moran
119 Caldwell Drive
Hazlehurst, MS 39083

Counsel for SouthTrust Bank

David S. Maxey, Esq.*
Spain & Gillon LLC
The Zinszer Building
2117 2nd Avenue North
Birmingham, AL 35203

AmSouth Bank

John Ketting, Loan Officer*
AmSouth Bank of Alabama
Main Office Birmingham
1900 – 5th Avenue North
Birmingham, AL 35203

Counsel for Shook & Fletcher Supply Co.

Donald M. Wright*
Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, AL 35205

Counsel for Additional Parties-in-Interest

John P. Whittington, Esq.*
Lloyd C. Peeples, III, Esq.
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, AL 35203-2736
Counsel for the Shareholders

William J. Bowman, Esq.
Hogan & Hartson
555 13th Street, N.W.
Washington, DC 20004-1109
Counsel for Hartford Insurance Co.

William R. Hanlon, Esq.
Franklin D. Kramer, Esq.
Shea & Gardner
1800 Massachusetts Avenue, NW
Washington, DC 20036
Counsel for CCR

Michael P. Richman, Esq.
Mayer, Brown, Rowe & Maw
1675 Broadway
New York, NY 10019-5820
Counsel for CCR

W. Clark Watson, Esq.*
Eric T. Ray, Esq.
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35201-0306
Counsel for Travelers Casualty and Surety Company

* Parties designated with an asterisk were served by hand-delivery. All other parties were served by overnight mail.